STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

GEORGE SARKA & KENNETH MALKES, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	Case No. LA-CE-647-H PERB Decision No. 1592-H January 28, 2004

Appearances: Pappy & Davis by George A. Pappy, Attorney, for George Sarka and Kenneth Malkes; University of California, Los Angeles by Lynne E. Thompson, Manager, for Regents of the University of California.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by George Sarka (Sarka) and Kenneth Malkes (Malkes) from a Board agent's dismissal (attached) of their unfair practice charge. The charge alleged that the Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA)[1] by discriminating against Sarka and Malkes, because of their protected activity and by refusing to engage in a meet and discuss session with the University Professional and Technical Employees representatives.

The Board has reviewed the entire record in this case, including the original, first, second, and third amended charge, Sarka and Malkes' appeal, and the University's response to

[1]HEERA is codified at Government Code section 3560 et seq.

the appeal. The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

DISCUSSION

The original and amended charges filed by Sarka and Malkes consist of a brief conclusory statement alleging violations of HEERA followed by approximately 300 pages of attached documents. The charge then directs the Board agent to review the 300 pages of attached documents for more information. In the warning letter, Sarka and Malkes were cautioned that such a charge fails to provide a clear and concise statement of the facts as required by PERB Regulation 32615(a)(5).[2]

On appeal, Sarka and Malkes take issue with the Board agent's application of PERB Regulation 32615(a)(5). They argue that a charge must only "alert the [respondent] of the general nature of the allegations made." Further, Sarka and Malkes assert that they should not be required to "allege each feature of a legal cause of action" in their charge. The Board disagrees.

The Board has long required that a charge include all the material facts necessary to establish a prima facie case. (See Los Angeles Unified School District (1984) PERB Decision

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[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 32615 provides, in pertinent part:

> (a) A charge may be filed alleging that an unfair practice or practices have been committed. The charge shall be in writing, signed under penalty of perjury by the party or its agent with the declaration that the charge is true, and complete to the best of the charging party's knowledge and belief, and contain the following information:
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> . . . . . .
>
> (5) A clear and concise statement of the facts and conduct alleged to constitute an unfair practice.

No. 473.) This must be done by providing a clear and concise statement of the facts. (PERB Reg. 32615.) The original and amended charges filed by Sarka and Malkes fail to meet this standard.

Despite the fact that Sarka and Malkes failed to provide a clear and concise statement of the facts, the record establishes that the Board agent thoroughly reviewed the documents attached to the original and amended charges. In addition, the Board has expended considerable time and effort to also review those documents. The Board's effort has been made all the more difficult by Sarka's and Malkes' practice of referencing documents, which in turn reference other documents, which in turn reference still more documents.

After thoroughly reviewing the original and amended charges and all the attachments, the Board agrees that Sarka and Malkes have failed to state a prima facie case. Accordingly, the charge must be dismissed.

ORDER

The unfair practice charge in Case No. LA-CE-647-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

Dismissal Letter

March 15, 2002

George A. Pappy, Attorney
PAPPY & DAVIS
2550 N. Hollywood Way, Suite 501
Burbank, CA 91505-1055

Re: George Sarka & Kenneth Malkes v. Regents of the University of California
Unfair Practice Charge No. LA-CE-647-H
DISMISSAL LETTER

Dear Mr. Pappy:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 28, 2001. A first amended charge was filed on September 28, 2001 and a second amended charge was filed on December 17, 2001. George Sarka and Kenneth Malkes (Charging Parties)[1] allege that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act (HEERA)[2] by discriminating against them for engaging in protected activity and by refusing to meet and discuss with University Professional and Technical Employees (UPTE) representatives.

I indicated in my attached letter dated January 16, 2002, that the above-referenced charge did not state a prima facie case. Charging Parties were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, the charge should be amended. Charging Parties were further advised that unless the charge was amended to state a prima facie case or was withdrawn prior to January 25, 2002, the charge would be dismissed. Charging Parties' requests for extensions of time to file an amended charge were granted and a third amended unfair practice charge was timely filed on March 1, 2002.

UPTE is the nonexclusive representative of a group of physicians employed by the University of California, Los Angeles at the Arthur Ashe Student Health and Wellness Center (SHC). Charging Parties, George Sarka and Kenneth Malkes, physicians at SHC, provide health care services to UCLA students.

The amended charge alleges four circumstances in which the University refused requests to meet and discuss with UPTE. First, the third amended charge restates facts alleging that Vice

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[1] Attached to the third amended charge is a statement signed by Dennis Kelly withdrawing from the charge.

[2] HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Chancellor Winston Doby violated HEERA when he refused to meet with UPTE. The charge alleges that between April 13, 2001 and June 25, 2001, UPTE job steward Eileen Flaxman and Dr. Sarka sent letters to Vice Chancellor Doby criticizing SHC management, complaining about retaliation and requesting a meeting. On an unspecified date, Vice Chancellor Doby provided a written response to these concerns. On August 9, 2001, Ms. Flaxman e-mailed Vice Chancellor Doby again asking to schedule a meet and discuss session. Vice Chancellor Doby responded by e-mail on August 10, 2001, stating:

> I believe I responded appropriately to the issues raised by you and Dr. Sarka and suggested if there were further concerns they should be raised through the proper channels. Since you are not an employee of Student Health and the Doctors are not a represented group, I do not believe it appropriate for me to meet with you on these matters.

The charge alleges that Vice Chancellor Doby unlawfully refused to meet with the designated UPTE representatives. The charge asserts that the University does not "get to choose who the union puts forward as the employee's representative."

The three remaining refusal to meet and discuss allegations were raised for the first time in the third amended unfair practice charge. The charge alleges that in early March 2001, Dr. Sarka requested a meeting with his supervisor, Dr. Edward Wiesmeier, Assistant Vice Chancellor and Director of Student Health Services, "to discuss an inflammatory and accusatory email written about him by Administrator, Michelle Pearson." Dr. Sarka asked that both his UPTE job steward and the University Human Resources representative be present. The charge alleges that Dr. Wiesmeier refused to meet with Dr. Sarka.

The charge alleges that in or about October 2001, Dr. Malkes and Ms. Flaxman made several requests to his supervisor, Dr. Jo Ann Dawson, to be moved away from a "destructive and volatile employee." Dr. Dawson met with Dr. Malkes and Ms. Flaxman concerning this matter after a grievance had been filed. However, when no resolution had been reached, Dr. Malkes and Ms. Flaxman pressed for further discussion. The charge states, "Instead of agreeing to meet and discuss, Dr. Dawson's final answer was sent via email, 'Thank you for your comments. I have said all I have to say on this matter.'"

Finally, the charge alleges that the University has refused to conduct regular physician meetings. In September 2001, at a general staff meeting, Dr. Wiesmeier responded to a physician's question, stating, "We will be reducing the number of Physician meetings." The charge alleges that UPTE and the University reached an agreement in January 2000 to, among other things, hold regular physician meetings. However, the charge does not provide a copy of a signed agreement. Rather, the charge attaches a January 27, 2000 letter from UPTE Executive Vice President Cliff Fried to Dr. Wiesmeier and University Manager of Employee and Labor Relations Lynne Thompson, in which Mr. Fried provided "an approximate summary of our agreements."

The charge also alleges that the University discriminated against Charging Parties because of their protected activity.

George Sarka

The charge alleges that Dr. Sarka serves as an UPTE job steward and has participated in meet and discuss sessions. Dr. Sarka has also filed two complaints against the University on August 20 and September 13, 2001 alleging "an ongoing pattern of harassment and intense job scrutiny from SHS management."

The charge alleges that the University has failed and refused to pay Dr. Sarka's expenses for attendance at a medical conference. A February 1, 2001 memo from Dr. Wiesmeier to Dr. Sarka states, in pertinent part, "We agree to reimburse Dr. Sarka $1000 as a final settlement for the conference he attended in winter 1999."

The charge also alleges that Dr. Wiesmeier singled out and harassed Dr. Sarka in connection with an incident in which Dr. Sarka is alleged to have transported a patient to the emergency room. On August 16, 2001, Dr. Wiesmeier sent Dr. Sarka a letter requesting information concerning Dr. Sarka's transportation of a patient to the emergency room in his private vehicle. Dr. Sarka responded in a memo dated September 6, 2001 in which he stated, "I would be more than happy to comply with your request if you could give the parameters of such an incident. At this time, I have no recollection of any patient's name to such an incident."

In a memo dated October 17, 2001, Dr. Wiesmeier stated, in part, to Dr. Sarka:

> Four months ago you stated that you transported, in your personal automobile a patient with a potentially serious neurological condition, to the emergency room. This statement caused me great concern because such an action could jeopardize the welfare of the patient and expose the University to liability. To assess the potential risk to everyone involved, I asked you for more details about this event including the name of the patient. You have not been forthcoming in your responses to me. After some prompting on my part you responded that I would "receive some kind of answer after the 24th of July 2001." You did not do so, necessitating that I send you further requests. . . ."
>
> This is an incident that was reported by you some months ago. I am again requesting that you share with me all the details of this self-reported event as well as any other occasions when you may have transported a patient in your own vehicle.

On November 6, 2001, Dr. Wiesmeier wrote to Dr. Sarka, in part:

> Your responses to me of 23 October 2001 once again do not contain the information I requested from you. In previous communications with you I have made it clear that my expectation is that you will be forthcoming with reasonable requests for information and that you will be mindful of the unnecessary use of resources. In particular I have counseled you for some months on numerous occasions about your over dependence of diagnostic tests and studies which are unnecessary and easily avoided through the use of appropriate clinical judgment. I have mentioned to you my concern about the impact of such an approach to student patients and the need to make immediate and concerted modifications in your approach. My communications with you on this topic date back to 1 February 2001 and have continued on a regular basis since that time, including 3 May 2001, 25 May 2001, 6 June 2001, 15 June 2001, 30 June 2001, 16 August 2001 and 17 October 2001.

The charge alleges that the University departed from established procedures and failed to investigate by accusing Dr. Sarka of wrongdoing without proper evidence for the alleged transport of a patient.

The charge also alleges that after 13 years of service at UCLA, Dr. Sarka has never received a less than a "superlative evaluation." On October 25, 2001, Dr. Sarka received an annual performance evaluation from Dr. Wiesmeier. The evaluation states in part:

> While I have been your direct supervisor only since March 2001 and you were away for much of the summer on furlough I have never the less formulated an opinion regarding various aspects of your performance. Specifically I have had cause to be concerned, which I have shared with you, about your use of our resources and their impact on the quality of care you provide. As a personal goal you must alter the manner in which you practice medicine in the Ashe Center. You are too often at the extreme high end of test utilization. I am also concerned that you have not been forthcoming when I have asked you for specific information related to your practice. Examples include: your transfer of a patient to the emergency room in your automobile and your frequent use of a radiology sub specialist rather than our consultant.

On November 30, 2001, Dr. Sarka was given his lowest merit increase ever and the lowest among employees working at the SHC. On December 6, 2001, Dr. Sarka sent an e-mail message to Dr. Wiesmeier and Al Setton requesting information concerning issuance of the 2000-2001 merit increases. Mr. Setton responded by e-mail on December 13, 2001, stating:

> This year we were working with a 2% merit pool. Guidelines provided to Directors in Student Development and Health are listed below. The merit increase you received indicates that your supervisor's assessment of your performance falls in category #3. Your supervisor will have counseled you of the areas of improvement needed and these should be reflected in your most recent performance evaluation.
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> The guidelines for merit increase recommendations for Student Development & Health are as follows:
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> 1 1.7 - 3% for exceeds expectations
> 2 1 - 1.75% for fully satisfactory performance
> 3 0 - 1% for needs improvement
>
> The employee's performance evaluation must support your recommendation.

On or about December 13, 2001, Dr. Wiesmeier informed Dr. Sarka that he must dictate his patient notes because his handwriting was illegible. A May 2000 accreditation review on patient chart notes indicated that only 75% of patient records were legible. The charge alleges that dictating patient notes takes extra time. The charge alleges that although other doctors' handwriting is illegible, no other doctor has been required to dictate patient chart notes.

The charge also alleges that despite having been elected by his colleagues to receive the first Physician's Recognition Award for 2000-2001, the University gave Dr. Sarka, on an unspecified date, the lowest Physician's Performance-Based Augmentation award for the academic year.

Finally, the charge alleges that Dr. Sarka was "singled out among his colleagues for retaliation for his lab work ordering practices, and was refused a clinical pathway by management in this regard."

Kenneth Malkes

The charge states, "Management was aware of Dr. Malkes' union activities when on or about June 26, 2001, management (Dr. Jo Ann Dawson) saw him with union representative Eileen Flaxman." Dr. Malkes also filed complaints on August 22 and September 19, 2001, alleging harassment and retaliation.

In June 2001, Dr. Malkes reported to Dr. Dawson two incidents, which occurred in early 2000, of aggressive behavior toward him by a clinical assistant. In one incident, the clinical assistant ran past Dr. Malkes and collided with him causing him to fall. Another time, Dr. Malkes was talking on the phone and the clinical assistant grabbed the phone out of his hand in began talking to the caller. The clinical assistant refused Dr. Malkes' request to return the phone. In

a third incident, Dr. Malkes reported that the clinical assistant was uncooperative when she refused to allow him to store physician charts at the nursing station. Based on this conduct, Dr. Malkes requested that his office be moved and that he not have to work in close proximity to this clinical assistant. Dr. Malkes asked Dr. Dawson not to investigate his charges, but simply to implement his requested changes.

In an August 27, 2001 letter, Dr. Dawson informed Dr. Malkes that following an investigation she concluded that the clinical assistant did not pose a threat to Dr. Malkes. Thus, Dr. Dawson found no reason to relocate Dr. Malkes' office. Dr. Dawson offered to facilitate a meeting between Dr. Malkes and the clinical assistant to address areas of disagreement or misunderstanding.

The charge alleges that the University's investigation of this matter was a "whitewash." The charge states, "This whitewash is particularly demonstrated by the fact, among others, that the 'clinical assistant,' during a meeting with her, Dr. Malkes and her supervisor, Nurse Lewis, on March 30, 2000, did not deny knocking Dr. Malkes down or grabbing the phone out of his hand, but merely characterized these incidents as an 'accident' or horseplay." The charge also alleges that the investigation was inadequate because Dr. Dawson failed to interview other clinicians and the caller who was speaking to Dr. Malkes when the clinical assistant grabbed the phone. The charge also states that Dr. Malkes was treated differently from others despite his years of service and his concern for his personal safety.

The charge alleges that soon after learning of Dr. Malkes' union activity, his supervisor, Dr. Dawson, "began to harass Dr. Malkes with frivolous accusations." On August 1, 2001, Dr. Dawson sent Dr. Malkes an e-mail message providing a summary of their July 25, 2001 meeting. The e-mail message stated, in part:

> You have expressed concern re how you are perceived and asked that I let you know of comments re your actions that are negative. You expressed interest in this information to help you work on communication to have perceptions more in line with your views of your presence in Ashe. Based on this request, I report some comments brought to me about your behavior that may add to the perceptions that concern you.
>
> 1. Refusal to see a pt during the noon hour. Your [sic] saw a total of 1 pt that hour during a pretty slow day. The patient was rescheduled to another time.
> 2. Refusal to countersign a prescription for an allergy med that was to be filled at an outside pharmacy
> 3. Patient complaint about almost [an] hour delay in being seen even tho [sic] he came on time; was checked and ready for you in the exam room before you left for your meeting with Ed Wiesmeier.

> 4. Shouting at the clinical assistant who checked in the above patient re why he didn't page you re the patient (he had; you reportedly responded to the page 10 min later). This event was witnessed by a 3rd person-- the supervisor of the CA.
>
> I also mentioned that the supervisor has requested an appt with the 4 of us (you, the clinical assistant, she, and I). I will arrange for this soon.
>
> Finally, I mentioned that I've been told that you've slammed the door in the faces of clinical assistants; slammed or shoved charts at clinical assistants.

Dr. Malkes responded to this e-mail message on August 13, 2001, either disputing that these incidents took place or providing an explanation.

The charge alleges that on September 1, 2001, Dr. Dawson gave Dr. Malkes the poorest performance evaluation of his career at SHC. The evaluation states in pertinent part:

> Goals for next 2001-02
>
> 1. Provide high standard of care for your patients by treating common conditions such as acne with indicated medications, including Accutane.
>
> 2. Work as an efficient team member by seeing patients when called upon without requesting a schedule adjustment, including those who are waiting for you in the examination room, and communicating with all staff in a professional manner.
>
> 3. Contribute to Ashe Center goal of an effective consumer-oriented operation by making sure that meetings you request do not conflict with your patient care schedule and see patients waiting for you before you leave the clinic area.
>
> 4. Support Ashe's accreditation efforts for 01-02 by assisting in the writing of clinical guidelines and following them.
>
> 5. Prompt communication to your supervisor regarding any issues of concern to you.

The charge alleges that the statements on Dr. Malkes' evaluation are fabrications. The charge alleges that during a meeting on October 4, 2001, "management was unable to give Dr. Malkes any data or instances that would support these adverse claims." On October 8, 2001, Dr. Malkes provided a written response to be attached to his evaluation.

The charge also alleges that Dr. Dawson fabricated evidence against Dr. Malkes. On October 18, 2001, Dr. Dawson sent Dr. Malkes an e-mail message asking about a patient he escorted from the exam room and took downstairs to the second floor. A clinical assistant was to draw blood from the patient but found the exam room empty. Dr. Dawson stated that Dr. Malkes did not inform the clinical assistant that he was moving the patient and he did not indicate that the room was available by turning on the green exam room light. The charge alleges that Dr. Dawson fabricated evidence because a lab report demonstrates that blood was drawn from the patient.

Finally, a November 9, 2001 letter informed Dr. Malkes that he would be receiving a low merit increase based on a "needs improvement" rating.

As stated in the attached letter, HEERA section 3563.2(a) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

This charge was filed on August 28, 2001. Thus, allegations of unfair practices which occurred before February 28, 2001 are untimely filed and must be dismissed. In addition, where the charge fails to provide facts indicating when an unfair practice occurred, PERB is unable to determine whether the allegation was timely filed. These allegations will also be dismissed as untimely filed.

There are three allegations involving Dr. Sarka which fail to demonstrate that they were timely filed. The charge alleges that a February 1, 2001 memo states at the University agreed to reimburse Dr. Sarka for expenses to attend a conference in winter 1999. The charge alleges that Dr. Sarka never received his reimbursement. There are no facts alleged which demonstrate when Dr. Sarka realized that he would not be reimbursed. Thus, it cannot be determined whether this allegation was timely filed and this allegation must be dismissed.

In addition, the charge alleges that despite having been elected by his colleagues to receive the first Physician's Recognition Award for 2000-2001, the University gave Dr. Sarka, on an unspecified date, the lowest Physician's Performance-Based Augmentation award for the academic year. Finally, the charge alleges that Dr. Sarka was "singled out among his colleagues for retaliation for his lab work ordering practices, and was refused a clinical pathway by management in this regard." These allegations also fail to provide facts which demonstrate that they occurred within the six month period prior to the filing of the unfair practice charge. Accordingly, these allegations are dismissed as untimely filed.

The charge also alleges four situations in which the University failed or refused to meet and discuss with UPTE.

Again, as stated in the attached letter, a nonexclusive representative does not have an independent right to represent employees. The right to be represented by an employee organization is held by the employees. (Regents of the University of California v. PERB (1985) 168 Cal.App.3d 937.) Accordingly, an employer's duty to nonexclusively represented employees is to notify employees of proposed changes in working conditions and meet with the employees' union, if requested. (Regents of the University of California (1994) PERB Decision No. 1055-H.) An employer has a right to designate its own representatives for purposes of collective bargaining obligations. (Westminster School District (1982) PERB Decision No. 277; Savanna School District (1982) PERB Decision No. 276.)

In the attached letter, I addressed the allegation that Vice Chancellor Doby refused to meet with UPTE despite several requests. I indicated that the charge did not provide sufficient facts to establish a that Vice Chancellor Doby's August 10, 2001 e-mail message demonstrated an absolute refusal to meet rather than merely directing the parties to the University's designated representative. The third amended charge does not address this allegation, but states that the University does not "get to choose who the union puts forward as the employee's representative." However, the facts do not demonstrate a refusal to meet with Ms. Flaxman as UPTE's designated representative. Accordingly, this allegation is dismissed.

The charge also alleges that Dr. Wiesmeier refused Dr. Sarka's request to meet concerning an e-mail message between Ms. Pearson and Dr. Wiesmeier. Similarly, the charge alleges that Dr. Dawson refused Dr. Malkes' request for an additional meeting to discuss his concerns about another employee and his request to move his office.

The University has an obligation to meet and discuss over matters within the scope of representation. (Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1990) PERB Decision No. 842-H.) The charge alleges that Dr. Wiesmeier refused to meet with Dr. Sarka to discuss an "inflammatory and accusatory email written about him by Administrator, Michelle Pearson." The charge does not demonstrate that Dr. Sarka sought to discuss a matter within scope. There is no evidence that the e-mail message resulted in any disciplinary action against Dr. Sarka or a change in the terms and conditions of his employment. Thus, the University had no obligation to meet and discuss over this matter.

In a similar matter, Dr. Dawson previously met with Dr. Malkes and Ms. Flaxman regarding Dr. Malkes concerns during a grievance meeting. The charge alleges that Dr. Malkes was not satisfied with the outcome of the grievance meeting. However, the obligation to meet and discuss does not require the parties to continue to impasse. Thus, the University did not breach its duty to meet and discuss when Dr. Dawson refused to schedule further meetings.

The charge also alleges that the University refused to conduct regular physician meetings after agreeing to do so. I noted in the attached letter that the charge failed to establish that the parties had a written agreement. The third amended charge also fails to establish that the

parties had a binding written agreement concerning this matter. Thus, allegation fails to state a prima facie case.

Finally, the charge alleges that the University discriminated against Dr. Sarka and Dr. Malkes because they engaged in protected activity.

As previously stated, to demonstrate a violation of HEERA section 3571(a), a charging party must show that: (1) the employee exercised rights under HEERA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (North Sacramento School District (1982) PERB Decision No. 264), it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (State of California (Department of Transportation) (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the employee (Santa Clara Unified School District (1979) PERB Decision No. 104.); (3) the employer's inconsistent or contradictory justifications for its actions (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S; (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; (6) employer animosity towards union activists (Cupertino Union Elementary School District) (1986) PERB Decision No. 572.); or (7) any other facts which might demonstrate the employer's unlawful motive. (Novato; North Sacramento School District, supra, PERB Decision No. 264.)

Evidence of adverse action is also required to support a claim of discrimination or reprisal under the Novato standard. (Palo Verde Unified School District (1988) PERB Decision No. 689.) In determining whether such evidence is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (Ibid.) In a later decision, the Board further explained that:

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment. [Newark Unified School District (1991) PERB Decision No. 864; emphasis added; footnote omitted.]

The charge alleges that Dr. Wiesmeier singled out and harassed Dr. Sarka connection with an incident in which Dr. Sarka is alleged to have transported a patient to the emergency room in his private vehicle. The charge appears to suggest that Dr. Wiesmeier's repeated written requests for information concerning the incident constitute harassment. However, as stated above, Dr. Sarka's subjective perceptions of harassment do not necessarily demonstrate adverse action. There is no evidence that Dr. Wiesmeier's request for information about this matter had an adverse impact on the terms and conditions of Dr. Sarka's employment. I do not find the requests for information to be adverse actions. Thus, this allegation fails to state a prima facie case and is dismissed.

On October 25, 2001, Dr. Sarka received an annual performance evaluation which included comments expressing some concern about his performance. The charge alleges that during his 13 years of employment with the University, Dr. Sarka has never received less than a "superlative evaluation." This allegation fails to demonstrate nexus or a connection between Dr. Sarka's protected activity and the negative evaluation. The statements in the evaluation do not demonstrate union animus and there is no other evidence that the University departed from established procedures concerning preparation or timing of the evaluation. Thus, this allegation is also dismissed.

On November 30, 2001, Dr. Sarka was given his lowest merit increase ever and the lowest among employees working at the SHC. This allegation also fails to establish the required nexus. Dr. Sarka requested and was given the guidelines for merit increases. The guidelines demonstrate that merit increases were tied to the annual evaluations. There are no facts alleged which demonstrate that other similarly situated employees received merit increases which were inconsistent with the guidelines.

Finally, the charge alleges that on or about December 13, 2001, Dr. Wiesmeier informed Dr. Sarka that he must dictate his patient notes because his handwriting was illegible. This allegation fails to establish a connection between Dr. Wiesmeier's request and Dr. Sarka's protected activity. Further, the charge does not demonstrate that the request was not meritorious. Accordingly, the allegation that the University discriminated against Dr. Sarka fails to state a prima facie case and is dismissed.

In June 2001, Dr. Malkes requested that his office be moved to the second floor after reporting incidents of aggressive behavior toward him by a clinical assistant. On August 27, 2001, Dr. Dawson informed Dr. Malkes that following an investigation she had concluded that the clinical assistant did not pose a threat to him. She therefore refused to relocate Dr. Malkes' office. The charge alleges that the University's investigation of this matter was a "whitewash." Dr. Malkes reached his conclusion because the clinical assistant did not deny the accusations and because Dr. Dawson did not interview other clinicians or the caller who was speaking to Dr. Malkes when the clinical assistant grabbed the telephone out of his hand. The charge also states that Dr. Malkes was treated differently from others despite his years of service and his concern for his personal safety.

This allegation fails to demonstrate the necessary nexus between his protected activity and the denial of his request to relocate his office. The charge alleges that the University conducted only a cursory investigation of his claim of aggressive behavior by a clinical assistant because Dr. Dawson did not interview specified individuals. However, the charge states that Dr. Dawson did meet with the parties directly involved in these incidents. Further, Dr. Dawson does not conclude that the reported incidents did not occur, only that they did not pose a threat to Dr. Malkes. Finally, the charge does not describe other similarly situated individuals who were treated differently than Dr. Malkes. Thus, this allegation fails to state a prima facie case.

On August 1, 2001, Dr. Dawson sent Dr. Malkes an e-mail message providing a summary of their recent meeting. In her message, Dr. Dawson stated that at his request she was providing him with comments brought to her by other staff concerning his behavior. The charge alleges that Dr. Dawson harassed Dr. Malkes with these "frivolous accusations."

This allegation fails to demonstrate that an adverse action was taken against Dr. Malkes. The charge does not dispute that Dr. Malkes asked Dr. Dawson to provide him with staff comments which would assist him with his communication skills. An employee cannot ask for input and then claim it is a violation of state law when it is provided. There is no evidence that this document was placed in Dr. Malkes' personnel file or that any disciplinary action was taken in response to these matters. Accordingly, this allegation is also dismissed.

The charge alleges that on September 1, 2001, Dr. Dawson gave Dr. Malkes the poorest performance evaluation of his career at SHC. Other than the evaluation being issued in close proximity to Dr. Malkes' August 22, 2001 complaint, this allegation fails to demonstrate the required nexus. There is no evidence that the University departed from established procedures in the preparation or timing of the evaluation. Thus, this allegation fails to state a prima facie case and is dismissed.

The charge also alleges that Dr. Dawson fabricated evidence against Dr. Malkes when she questioned him about a patient that he escorted downstairs. This allegation also fails to demonstrate adverse action. Dr. Dawson sent Dr. Malkes an e-mail message asking about this incident and reminding him to inform a clinical assistant when he moved a patient and to follow the procedure to indicate that an exam room is free. There is no evidence that this conduct was motivated by his protected activity.

Finally, the charge alleges that on November 9, 2001 Dr. Malkes was informed that he would be receiving a low merit increase based on a "needs improvement" performance evaluation rating. This allegation also fails to demonstrate the required nexus. The guidelines previously referenced demonstrate that merit increases were tied to the performance evaluations. There are no facts alleged which demonstrate that other similarly situated employees received merit increases which were inconsistent with the guidelines. Therefore, the allegation that the University discriminated against Dr. Malkes fails to state a prima facie case and is dismissed.

Right to Appeal

Pursuant to PERB Regulations,[3] you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

[3] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By _____
Robin W. Wesley
Regional Attorney

Attachment

cc: Edward M. Opton, Jr.
Lynne Thompson

Warning Letter

January 16, 2002

Cliff Fried, Executive Vice President
UPTE - CWA Local 9119
1015 Gayley Avenue, Suite 115
Los Angeles, CA 90024

Re: George Sarka, Dennis Kelly and Kenneth Malkes v. Regents of the University of California
Unfair Practice Charge No. LA-CE-647-H
WARNING LETTER

Dear Mr. Fried:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 28, 2001. A first amended charge was filed on September 28, 2001 and a second amended charge was filed on December 17, 2001. George Sarka, Dennis Kelly and Kenneth Malkes (Charging Parties)[1] allege that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act (HEERA)[2] by discriminating against them for engaging in protected activity and by refusing to meet and discuss with University Professional and Technical Employees (UPTE) representatives.

The original and amended charges consist of a brief statement and approximately 300 pages of attached documents, consisting of e-mail messages, memos, letters, complaint forms and handwritten notes. PERB Regulation 32615(a)(5)[3] requires that a charge contain a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." A charging party must alleged the "who, what, when, where and how" of an unfair practice. Legal conclusions are insufficient to demonstrate a violation of EERA. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S; United Teachers-

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[1] The charge also lists as charging parties "all other physicians at SHC." PERB Regulations do not provide for class-action charges. Thus, the individuals named on the charge form are the sole charging parties for purposes of this charge.

[2] HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

[3] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Los Angeles (Ragsdale) (1992) PERB Decision No. 944; Charter Oak Unified School District (1991) PERB Decision No. 873, fn. 6.)

A charging party is responsible for setting forth the dates, names of involved individuals and specific conduct alleged to have violated the Act. The present charge provides a description of the conduct alleged to violate the University's duty to meet and discuss with UPTE. However, the charge directs the Board agent to ascertain from the attached documents facts which demonstrate a prima facie case of discrimination. This approach does not meet the requirements in PERB Regulation 32615(a)(5) and puts the charging party in jeopardy of having essential facts overlooked. With this in mind, the following is a review of the factual allegations derived from the charge and its attachments.

UPTE is the nonexclusive representative of a group of physicians employed by the University of California, Los Angeles at the Arthur Ashe Student Health and Wellness Center (SHC). Charging Parties, physicians at SHC, provide health care services to UCLA students. The charge alleges that Dr. Sarka serves as an UPTE job steward and has participated in meet and discuss sessions with University representatives.

On an unknown date prior to January 27, 2000, UPTE Executive Vice President Cliff Fried met with Dr. Edward Wiesmeier, Director of Student Health Services, in a meet and discuss session. It is unclear whether Dr. Sarka or any other UPTE members participated in the session.

On January 27, 2000, Mr. Fried sent a letter to Dr. Wiesmeier and Lynne Thompson, Manager of Employee and Labor Relations. Mr. Fried stated in the letter, "The following constitutes an approximate summary of our agreements reached at our last meet and discuss." The letter covers matters such as: professional conferences, accreditation, leave, patient charts, staff meetings, posting of administrative jobs, space utilization, patient workload, teaching assignments, evaluation forms and implementation of policy changes. There is no indication the University concurred in the terms of the "agreement" outlined by Mr. Fried.

The charge alleges that certain matters listed in the January 27, 2000 letter have either not been met or have been violated by the University. Some of these include a failure to: complete SHC accreditation; appoint a physician to the Student Health Advisory Committee; post managerial positions; equally assign teaching opportunities; equally assign patients; and halt implementation of policy changes during the summer. There are no facts describing when UPTE represented employees became aware of the University's failure to comply with the terms of the "agreement."

The charge alleges that the failure to implement or comply with all of the terms of the "agreement" led UPTE to seek to meet and discuss with UCLA Chancellor Albert Carnesale or Winston Doby, Vice Chancellor of Student Affairs.

Eileen Flaxman is an UPTE job steward for the UCLA north campus area. She is assigned to assist UPTE members employed at the SHC. On April 13, 2001, Ms. Flaxman sent a letter to

Chancellor Carnesale concerning patient care at the SHC. Ms. Flaxman referenced critical student patient evaluations of the health care services provided at the SHC. She also criticized SHC management as "capricious, self-serving (inappropriate monetary awards), retaliatory (harassment for speaking out), and biased (favoritism)." Ms. Flaxman urged Chancellor Carnesale to order a fiscal audit and an independent investigation of the SHC management. The charge alleges that Chancellor Carnesale did not respond to Ms. Flaxman's letter.

On April 24, 2001, Dr. Sarka sent a memo to Vice Chancellor Doby. Dr. Sarka's memo addressed concern with SHC management, retaliation against UPTE members and patient complaints. Dr. Sarka requested that Vice Chancellor Doby meet with UPTE concerning these matters. The charge alleges that Vice Chancellor Doby did not respond to this request to meet and discuss.

On May 22, 2001, Ms. Flaxman sent a memo to Chancellor Carnesale again criticizing SHC management, requesting an investigation of management, complaining about retaliation and requesting a meeting.

On May 31, 2001, Vice Chancellor Doby responded to Dr. Sarka and Ms. Flaxman on behalf of Chancellor Carnesale. Vice Chancellor Doby asked for more information and urged them to take their concerns to Dr. Wiesmeier in the meantime. Vice Chancellor Doby also stated, "In addition, please identify the non-represented physicians and other Student Health Services employees you are claiming to represent."

On June 25, 2001, Ms. Flaxman provided information in response to Vice Chancellor Doby's request. Ms. Flaxman also told Vice Chancellor Doby that she represented "union physicians" at SHC. Ms. Flaxman again asked for a meeting.

At some point, Vice Chancellor Doby provided a response to Ms. Flaxman. The response is not included in the charge. On August 9, 2001, Ms. Flaxman e-mailed Vice Chancellor Doby asking to schedule a meet and discuss session. Vice Chancellor Doby responded by e-mail on August 10, 2001, stating:

> I believe I responded appropriately to the issues raised by you and Dr. Sarka and suggested if there were further concerns they should be raised through the proper channels. Since you are not an employee of Student Health and the Doctors are not a represented group, I do not believe it appropriate for me to meet with you on these matters.

<u>George Sarka</u>

As previously noted, the charge alleges that Dr. Sarka serves as an UPTE job steward and has participated in meet and discuss sessions. On August 20, 2001, Dr. Sarka filed a complaint alleging "an ongoing pattern of harassment and intense job scrutiny from SHS management . . .

due to Dr. Sarka's involvement in union activity." In this complaint, Dr. Sarka alleged that Dr. Wiesmeier continued to inundate him with "written criticisms, questions and even accusations regarding his work is a physician." The complaint also alleged that his requests to be involved in professional activities at the SHC had been ignored. A second complaint filed on September 13, 2001, alleged that Dr. Wiesmeier sent Dr. Sarka letters concerning the following: Dr. Sarka transporting a patient to the emergency room; overuse of certain medical tests; denial of Dr. Sarka's request for funding to pursue a MPH degree; and a monetary award which was lower than that received by colleagues. On October 25, 2001, Dr. Sarka received an annual performance evaluation from Dr. Wiesmeier. The evaluation states in part:

> While I have been your direct supervisor only since March 2001 and you were away for much of the summer on furlough I have never the less formulated an opinion regarding various aspects of your performance. Specifically I have had cause to be concerned, which I have shared with you, about your use of our resources and their impact on the quality of care you provide. As a personal goal you must alter the manner in which you practice medicine in the Ashe Center. You are too often at the extreme high end of test utilization. I am also concerned that you have not been forthcoming when I have asked you for specific information related to your practice. Examples include: your transfer of a patient to the emergency room in your automobile and your frequent use of a radiology sub specialist rather than our consultant.

Dennis Kelly

On August 20, 2001, Dr. Kelly filed a complaint alleging retaliation for his "intensified involvement in union activities." The complaint alleged the following: verbal and written allegations critical of Dr. Kelly's behavior, conduct and practice; a failure to respond to safety concerns when a rat was found in his office; another clinician was appointed to serve in the SHC Men's clinic with Dr. Kelly without posting the position; a failure to manage other employees' work behavior; and a failure to provide Dr. Kelly with an adequate office and computer.

On August 28, 2001, Dr. Kelly filed a complaint concerning a counseling memo from Dr. Wiesmeier dated August 28, 2001. A September 6, 2001 complaint was filed regarding a September 4, 2001 counseling memo from Dr. Wiesmeier.

On October 25, 2001, Dr. Kelly received his annual performance evaluation which states, in part:

> I am concerned that your communications, despite my counseling, continue to be negative and accusatory. You have overstated or misstated facts and exaggerated events. Despite

> various accommodations you continue to be unhappy and dissatisfied in the workplace.

Kenneth Malkes

On August 22, 2001, Dr. Malkes filed a complaint against his supervisor, Dr. Jo Ann Dawson concerning an e-mail message received from Dr. Dawson. On August 1, 2001, Dr. Dawson sent Dr. Malkes an e-mail message in which she stated that during a meeting with Dr. Malkes, he requested that she provide him with any negative staff comments to assist him with his communication. Dr. Dawson provided staff comments concerning Dr. Malkes which you been reported to her. These included: a refusal to see a patient during a noon hour; refusal to countersign a prescription; a patient complaint about a nearly one-hour wait in the exam room; and shouting at a clinical assistant. Dr. Malkes' complaint alleged that Dr. Dawson's e-mail message demonstrated "a continuous course of harassment and hostility" due to this union involvement.

On September 19, 2001, Dr. Malkes filed a complaint alleging that Dr. Dawson delayed and ultimately denied his request to be moved away from another staff member due to that employee's "unprofessional and volatile behavior." The complaint alleges that Dr. Dawson continues to send him letters containing "faults, unfounded and unjustified" accusations.

On September 1, 2001, Dr. Dawson provided Dr. Malkes with his annual performance evaluation. The evaluation states in part:

> Goals for next 2001-02
>
> 1. Provide high standard of care for your patients by treating common conditions such as acne with indicated medications, including Accutane.
>
> 2. Work as an efficient team member by seeing patients when called upon without requesting a schedule adjustment, including those who are waiting for you in the examination room, and communicating with all staff in a professional manner.
>
> 3. Contribute to Ashe Center goal of an effective consumer-oriented operation by making sure that meetings you request do not conflict with your patient care schedule and see patients waiting for you before you leave the clinic area.
>
> 4. Support Ashe's accreditation efforts for 01-02 by assisting in the writing of clinical guidelines and following them.
>
> 5. Prompt communication to your supervisor regarding any issues of concern to you.

Based on the facts stated above, the charge fails to state a prima facie case.

First, HEERA section 3563.2(a) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

The statute of limitations bars PERB's jurisdiction over matters which occurred more than six months prior to the filing of the charge. The charge was filed on August 28, 2001. Thus, allegations of unfair practices which occurred before February 28, 2001 are untimely filed and must be dismissed. In addition, where the charge fails to provide facts indicating when an unfair practice occurred, PERB is unable to determine whether the allegation was timely filed. These allegations will also be found untimely filed.

Second, under HEERA, a nonexclusive representative does not have an independent right to represent employees. The right to be represented by an employee organization is held by the employees. (Regents of the University of California v. PERB (1985) 168 Cal.App.3d 937.) Accordingly, an employer's duty to nonexclusively represented employees is to notify employees of proposed changes in working conditions and meet with the employees' union, if requested. (Regents of the University of California (1994) PERB Decision No. 1055-H.) An employer has a right to designate its own representatives for purposes of collective bargaining obligations. (Westminster School District (1982) PERB Decision No. 277; Savanna School District (1982) PERB Decision No. 276.)

The charge alleges that the University refused to meet with UPTE despite several letters describing employee concerns with the SHC and requesting a meeting. Between April 13, 2001 and August 9, 2001, UPTE representatives sought a meeting with either Chancellor Carnesale or Vice Chancellor Doby. The charge states that Vice Chancellor Doby provided a written response to the concerns raised in Ms. Flaxman and Dr. Sarka's letters. Apparently unsatisfied with the response, on August 9, 2001, Ms. Flaxman sent Vice Chancellor Doby an e-mail message again asking for a meeting. Vice Chancellor Doby responded on August 10, 2001, indicating that he had addressed their concerns. Vice Chancellor Doby instructed Ms. Flaxman to raise any further concerns through the appropriate channels. Vice Chancellor Doby further stated that he did not believe it was appropriate for him to meet with UPTE because the SHC physicians were not an exclusively represented group.

The statements by Vice Chancellor Doby do not establish an absolute refusal to meet and discuss. Vice Chancellor Doby directed UPTE to take its concerns to the University's designated representative. Even the fact that Vice Chancellor Doby declined to meet with UPTE because the doctors were not exclusively represented, does not demonstrate an absolute refusal to meet by the University. It is unclear from Vice Chancellor Doby's statement whether

he was merely indicating that he was not the proper University representative to meet with nonexclusive representatives. Accordingly, as alleged, the facts do not demonstrate that the University refused to meet and discuss with UPTE when it directed UPTE to take its concerns to its designated representative.

Finally, to establish a prima facie case of discrimination, a charging party must show that: (1) the employee exercised rights under HEERA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (North Sacramento School District (1982) PERB Decision No. 264), it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (State of California (Department of Transportation) (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the employee (Santa Clara Unified School District (1979) PERB Decision No. 104.); (3) the employer's inconsistent or contradictory justifications for its actions (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S; (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; (6) employer animosity towards union activists (Cupertino Union Elementary School District) (1986) PERB Decision No. 572.); or (7) any other facts which might demonstrate the employer's unlawful motive. (Novato; North Sacramento School District, supra, PERB Decision No. 264.)

Evidence of adverse action is also required to support a claim of discrimination or reprisal under the Novato standard. (Palo Verde Unified School District (1988) PERB Decision No. 689.) In determining whether such evidence is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (Ibid.) In a later decision, the Board further explained that:

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment. [Newark Unified School District (1991) PERB Decision No. 864; emphasis added; footnote omitted.]

The facts demonstrate that Charging Parties engaged in protected activity and that the University took adverse action against them by issuing performance evaluations which included negative comments. However, the charge does not clearly state facts which establish a connection or nexus between the Charging Parties' protected activity and the negative evaluations. Thus, this allegation fails to state a prima facie case and must be dismissed.

For these reasons, the allegation that the University discriminated against Charging Parties, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before January 25, 2002, I shall dismiss the above-described allegation from your charge. If you have any questions, please call me at the telephone number listed above.

Sincerely,

Robin W. Wesley
Regional Attorney